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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,140	10/10/2003	Louise M. Schneider	3086-1421 (BH2099.P1)	1284

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IN RE: 28533
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EXAMINER	
VENKAT, JYOTHSNA A	

ART UNIT	PAPER NUMBER
1619	

MAIL DATE	DELIVERY MODE
01/16/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/684,140	SCHNEIDER ET AL.	
	Examiner	Art Unit	
	JYOTHSNA A. VENKAT	1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 October 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3 and 5-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 3 and 5-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Receipt is acknowledged of amendment and remarks filed on 10/24/08. Claims 1, 3 and 5-10 are pending in the application.

Response to Arguments

Applicant's arguments with respect to claims 1, 3 and 5-10 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

Claims 1, 3 and 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of U. S. Patent 5,776,472 ('472) and PGPUB US 2004/0097472 A1 ('472 A1).

Patent '472 teaches cosmetic / dermatological compositions comprising iron chelating agents. See the title and abstract. Patent '472 at col.3, ll 44-54 teaches chelating agent tetra sodium EDTA and also other chelating agents and at col.7, ll 22-30 teaches adding vitamin E derivatives and at col.7, 53-63 suggests adding additives and this includes neutralizing agents. See examples for triethanolamine (neutralizing agents). The difference between the patent and instant application is patent '472 does not teach the claimed vitamin E derivative.

PGPUB '472 A1 teaches formulations comprising one tocopherol derivatives. See paragraph 84 and see examples 18 and 20. See examples for claimed" lauryl imino Dipropionic acid tocopherol phosphate". Example 18 is drawn to tocopherol derivative of claim 1. The percent is within the claimed weight percent. Example 18 does not teach claimed disodium salt. However, salt and acid share close structural similarity. See paragraph 84 wherein PGPUB teaches that the compound can be in free acid or salt or it can be diphosphate ester including two molecules for electron transfer agent. This suggests a disalt. Example 18 also teaches TEA,

which is claimed neutralizer. TEA is also known as triethanolamine. Example 18 has water and this reads on the claimed carrier.

Accordingly, it would be obvious to one of ordinary skill in the art at the time the invention was to prepare compositions taught by patent '472 using chelating agent , neutralizer and change the vitamin derivative of patent '472 with the another functional equivalent vitamin E derivative taught by PGPUB, which is lauryl imino Dipropionic acid tocopherol phosphate. It would be also obvious to one of ordinary skill in the art to substitute disodium salt which is Disodium Lauriminodipropionate Tocopheryl Phosphate for the free acid since salts are more soluble in water than the free form and the bioavailability of the salt is more than the free acid form. This is a prima facie case of obviousness.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /
Primary Examiner, Art Unit 1619